



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Dec-17-2009 2:43 pm

Case Number: CGC-09-495278

Filing Date: Dec-17-2009 2:36

Juke Box: 001 Image: 02707705

COMPLAINT

DE HOME LOANS, INC., AND BAC HOME LOANS VS. MORTGAGE GUARANTY INSURAN

001C02707705

Instructions:

Please place this sheet on top of the document to be scanned.

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: MORTGAGE GUARANTY INSURANCE
(AVISO AL DEMANDADO): CORPORATION**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF: COUNTRYWIDE HOME LOANS,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): INC. and BAC HOME
LOANS SERVICING, LP (formerly Countrywide Home Loans
Servicing, LP)**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
SAN FRANCISCO COUNTY SUPERIOR COURT
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número de caso): **CGC-09-495278**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David E. Weiss, Esq. (SBN 148147)
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

DATE: **DEC 17 2009**
(Fecha) **GORDON PARK-LI** Clerk, by M.A. MORAN, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

- 4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 David E. Weiss, Esq. (SBN 148147)
 REED SMITH LLP
 101 Second Street, Suite 1800
 San Francisco, CA 94105

TELEPHONE NO.: 415.543.8700 FAX NO.: 415.391.8269

ATTORNEY FOR (Name): Countrywide Home Loans, Inc. & BAC Home Loans Servicing

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Francisco, CA 94102
 BRANCH NAME:

CASE NAME: COUNTRYWIDE HOME LOANS, INC. and BAC HOME LOANS
 SERVICING, LP V. MORTGAGE GUARANTY INSURANCE CORPORATION

FOR COURT USE ONLY

FILED
 San Francisco County Superior Court

DEC 17 2009

GORDON PARK-LI, Clerk
 BY: *[Signature]*
 Deputy Clerk

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CGC-09-495278

JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary, declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1 - Declaratory Judgment

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
 Date: December 17, 2009
 David E. Weiss (TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

1 David M. Halbreich, Esq. (SBN 138926)
2 REED SMITH LLP
3 355 South Grand Avenue
4 Suite 2900
5 Los Angeles, CA 90071
6 Telephone: (213) 457-8000
7 Facsimile: (213) 457-8080
8 dhalbreich@reedsmith.com

9 David E. Weiss, Esq. (SBN 148147)
10 REED SMITH LLP
11 101 Second Street, Suite 1800
12 San Francisco, CA 94105-3659
13 Telephone: +1 415 543 8700
14 Facsimile: +1 415 391 8269
15 dweiss@reedsmith.com

16 Attorneys for Plaintiffs
17 COUNTRYWIDE HOME LOANS, INC. and
18 BAC HOME LOANS SERVICING, LP

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **CITY AND COUNTY OF SAN FRANCISCO**

21 COUNTRYWIDE HOME LOANS, INC., and
22 BAC HOME LOANS SERVICING, LP (formerly
23 Countrywide Home Loans Servicing, LP),

24 Plaintiffs,

25 vs.

26 MORTGAGE GUARANTY INSURANCE
27 CORPORATION,

28 Defendants.

Case No.: **CGC-09-495270**

**COMPLAINT FOR DECLARATORY
RELIEF**

DEMAND FOR JURY TRIAL

FILED
San Francisco County Superior Court

DEC 17 2009

GORDON PARK-LI, Clerk

[Signature]
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

MAY 21 2010 9:00 AM

DEPARTMENT 212

Plaintiffs Countrywide Home Loans, Inc. and BAC Home Loans Servicing, LP
(formerly Countrywide Home Loans Servicing, LP) (collectively "Countrywide"), by their
undersigned counsel, bring this action against Defendant Mortgage Guaranty Insurance Corporation
("MGIC"), and in support thereof, allege as follows:

1 of business at 6400 Legacy Drive, Plano, Texas 75024. Servicing LP owns the servicing rights for
2 certain loans insured by MGIC.

3 6. MGIC's standard policy, including the policies it issued to Countrywide and its
4 affiliates, provides that "the Insured must be the Servicer of a Loan." In addition, the standard
5 policy provides that "the Servicer acts as a representative of the Owner of the Loan (and the Owner's
6 designee, if any) and will bind the Owner and its designee for all purposes of this Policy, including
7 providing information to the Company, receiving any notices, paying premiums, accepting Loss
8 payments, and performing any other acts under this Policy." Countrywide is the insured on the
9 MGIC mortgage insurance policies at issue in this action.

10 **B. The Defendant**

11 7. MGIC is a corporation incorporated under the laws of the State of Wisconsin,
12 maintains its principal place of business at 270 E. Kilbourn Avenue, Milwaukee, Wisconsin 53202,
13 and is licensed to and does transact business in the State of California. MGIC is in the business of
14 issuing mortgage insurance policies for residential home mortgage loans, and is a sophisticated
15 market actor in this area. MGIC issued the mortgage insurance at issue in this action.

16 **III. JURISDICTION AND VENUE**

17 8. Jurisdiction is proper in this Court pursuant to California Code of Civil Procedure
18 Section 410.10 because Defendant does business in the State of California and the City and County
19 of San Francisco.

20 9. Venue is proper in this Court pursuant to California Code of Civil Procedure Section
21 395(a) because the Defendant does not reside in the State of California.

22 **IV. THE MORTGAGE INSURANCE POLICY**

23 10. Countrywide obtained "flow" mortgage insurance from MGIC to insure certain
24 mortgage loans. Flow policies are intended to cover individual loans generated and/or acquired by
25 Countrywide in the ordinary course of its business. The loans covered under flow policies are not
26 submitted as part of any pooling arrangement or securitization. They are individually submitted for
27 coverage and underwritten by mortgage insurers on an individual basis.
28

1 investors from credit losses. Mortgage insurance from MGIC also benefits consumers by helping
2 them achieve homeownership sooner with low-down-payment loans.”

3 **A. Mortgage Insurance Industry**

4 17. Over the last decade, Countrywide was a leading mortgage lender and servicer in the
5 United States. As part of that business, Countrywide established strategic business relationships
6 with mortgage insurance companies, including MGIC.

7 18. During this period of time, there was great competition in the mortgage insurance
8 market and MGIC, along with other mortgage insurers, engaged in an aggressive marketing campaign
9 to convince businesses such as Countrywide to purchase its mortgage insurance products and
10 services. MGIC advertised how it could assist lenders by insuring their loan portfolios and increasing
11 their ability to write more and more loans and therefore increase profitability.

12 19. Mortgage insurance was marketed as the means to protect lenders from the volatility
13 of the mortgage market. The Mortgage Insurance Companies of America (“MICA”), of which
14 MGIC is a member, has explained that “[r]ecent trends in industry profitability provide a graphic
15 picture of the cyclical risks of mortgage lending. It is against this pattern of peaks and valleys that
16 mortgage insurance was designed to protect lenders.” As further recognized by the MICA,
17 “[m]ortgage insurers cannot raise premiums or cancel policies if risk increases over time.”

18 20. During the course of the growth and development of Countrywide’s business, it
19 regularly and routinely interacted with MGIC at all levels of its business, ranging from senior
20 executives discussing their strategic business relationship to clerk-level employees dealing with
21 individual mortgage loans.

22 21. MGIC had substantial access to the details and procedures pursuant to which
23 Countrywide operated its mortgage business. In fact, MGIC regularly: (1) reviewed individual
24 mortgage loan data before loans became insured under a particular mortgage insurance policy and
25 suspended some mortgage loans from coverage upon review; (2) audited mortgage files after loans
26 were originated but before any default had occurred; and (3) handled numerous claims for insurance
27 coverage under mortgage insurance policies over the years.

28

1 22. Over the years in which their business relationship has existed, MGIC acquired
2 intimate knowledge of every aspect of Countrywide's mortgage business, including how
3 Countrywide structured mortgage transactions and underwrote individual loans, how loan
4 underwriting guidelines evolved over time, and all other practices and procedures Countrywide
5 followed in its mortgage business.

6 23. These regular interactions between Countrywide and MGIC occurred over the entire
7 course of their business relationship, and MGIC had access to detailed and comprehensive loan
8 information from Countrywide.

9 24. In addition to having a sound understanding of how Countrywide operated its
10 mortgage business based on its regular interactions with Countrywide, MGIC understood first hand
11 the risks associated with the mortgage lending business, given that MGIC insured many other
12 mortgage lenders.

13 25. Over the last decade, the mortgage industry as a whole, including the mortgage
14 insurance industry, began to offer and/or agree to insure a broader range of mortgage products. The
15 trend made more loans available, increased consumer choice, and fostered increased homeownership.
16 This evolution was common knowledge throughout all facets of the mortgage lending marketplace,
17 including among the mortgage insurance industry generally and MGIC specifically. It also was
18 discussed in both the mortgage trade press and popular media. The mortgage insurance industry,
19 including MGIC, saw itself as an important player in the goal of making homeownership attainable to
20 more and more people.

21 26. As the volume of mortgages being originated increased, the availability of mortgage
22 insurance for this increased volume was never an issue. Members of the mortgage insurance
23 industry, including MGIC, generated premium volumes substantially in excess of historic levels
24 based upon this growth in the mortgage market.

25 27. Changes in the mortgage industry, and the concomitant underwriting practices were
26 publicly reported and well known within MGIC. In SEC filings, Countrywide has emphasized that
27 its underwriting guidelines are designed so that its loans are saleable in the secondary mortgage
28

1 market and that the guidelines are developed to meet the requirements of private investors, rating
2 agencies, and third-party credit enhancement providers.

3 **B. MGIC's Selection of Insured Loans and Review of Selected Loans**
4 **After Issuance of the Flow Policy**

5 28. Countrywide insured, whether originated by a correspondent bank or Countrywide,
6 only a percentage of the loans it owned. MGIC was fully aware of this fact and jointly participated
7 with Countrywide in selecting the types of loans that would be insured.

8 29. MGIC participated by: (i) establishing the parameters into which a loan must fit to
9 qualify to be insured; (ii) approving guidelines submitted by Countrywide, which included
10 exceptions, with which a loan must fit to qualify to be insured; and/or (iii) reviewing the details of
11 the individual loans and agreeing that a specific individual loan was appropriately insured under the
12 policy. MGIC then applied the applicable premium rate based on the attributes of the individual
13 loan, with riskier attributes receiving higher premium rates.

14 30. When MGIC reviewed the detailed information for a particular loan, it did so through
15 mortgage data tapes that included such information as the note rate, the first payment date, LTV
16 ratio, borrower's FICO score, type of property, location of the property, appraisal information, loan
17 amount, loan original principal balance, and currency of payments. Countrywide would send MGIC
18 mortgage data tapes daily for the mortgages to be included in the Flow Policy. MGIC would review
19 that information and determine which mortgages would be insured under the Flow Policy and which
20 mortgages would be suspended from insurance based on MGIC's determination that certain
21 mortgages did not conform to agreed upon guidelines or risk attributes.

22 31. MGIC's parameters for the review of the loans depended on the particular loan. As
23 detailed above, and with MGIC's knowledge of the attributes of the loan, Countrywide underwrote
24 loans where guidelines allowed exceptions. Upon information and belief, MGIC was aware of and
25 recognized Countrywide's practice of underwriting loans where guidelines allowed exceptions.

26 32. The loans that MGIC had determined would be insured under the Flow Policy
27 complied with Countrywide guidelines for issuing loans, including "exception" loans that those
28 guidelines expressly permitted to be made, as well as the applicable terms and conditions of the

1 Flow Policy. Once MGIC agreed to insure an individual loan, it issued a Certificate for that loan,
2 which the Flow Policy defines as a document “extending the coverage indicated therein to a
3 specified Loan.”

4 33. MGIC not only obtained detailed and comprehensive information from its dealings
5 with Countrywide, it also obtained massive amounts of information from its relationships with other
6 mortgage insurance lenders. Through its partnering arrangements with other lenders, MGIC
7 undoubtedly has vast stores of information and data regarding the mortgage lending industry, far
8 more information than any individual lender might possess. Among the material that MGIC has
9 obtained over the years from these lenders is detailed information about each lender’s underwriting
10 guidelines. Accordingly, MGIC has been privy to underwriting guidelines from lenders and has seen
11 the development of underwriting practices and procedures for years.

12 34. Despite all of its experience and information and its commitment to use its experience
13 and information to help its customers avoid risk, MGIC did not make significant recommendations
14 to Countrywide or identify problems that might negatively affect delinquency; rather, MGIC audited
15 Countrywide loans and underwriting practices and affirmatively approved them. MGIC never
16 expressed significant concern to Countrywide about its underwriting practices until after the real
17 estate market collapsed and claims started to be made at an increasing rate. As long as the real estate
18 market remained relatively strong, and claims levels remained moderate, MGIC was happy to collect
19 premiums on loans that were made based on existing underwriting practices, about which it was
20 fully aware.

21 **C. The National Housing Decline And “Mortgage Crisis”**

22 35. As is now common knowledge, the once booming housing market collapsed. MGIC
23 continued to express satisfaction with Countrywide underwriting practices even after the real estate
24 market and mortgage business headed into crisis. As home price appreciation continued to slow in
25 certain markets, by early 2007 lenders selling subprime loans found it more difficult to sell those
26 loans into the secondary markets, and some of those lenders downsized or failed. By late summer
27 2007, the secondary market which had existed for securitized mortgage loans (whether subprime or
28

1 prime in nature) largely dried up. Moreover, throughout 2007, real estate prices flattened and then
2 began to decrease nationally in the first national home price depreciation since the Great Depression,
3 leading to substantial increases in default and foreclosure rates. Active participants in the real estate
4 and mortgage markets, including MGIC, were well aware of these market conditions and the popular
5 press was full of news of a “mortgage crisis.”

6 36. The United States has spiraled downward into a deep economic recession. The above
7 discussed decreases in home prices resulted in many homeowners finding themselves in a position of
8 negative equity, *i.e.* these borrowers had debt higher than the value of the property. In addition to
9 the collapse of the real estate market, employers have been downsizing, eliminating millions of
10 employees as well as decreasing existing employees’ salaries. According to the United States Labor
11 Department, the unemployment rate has risen to over 10%.

12 37. As a result of the factors above and other economic factors, the United States
13 experienced a dramatic increase in the rates of defaults on residential mortgage loans. The increase
14 of defaults is not limited to loans originated by Countrywide, but is a phenomenon occurring
15 nationwide and has impacted all mortgage lenders. This risk of default is exactly the type of risk
16 MGIC agreed to insure.

17 **D. Proper Submission of Claims for Coverage by Countrywide**

18 38. Given the historic level of defaults across the country, the number of claims
19 submitted to MGIC by Countrywide for loans in default increased.

20 39. Loans insured under the Flow Policy have been and continue to be in default as that
21 term is defined in the Flow Policy. Defaults for the loans insured by the Flow Policy are expected to
22 continue for some time.

23 40. Pursuant to the terms and conditions of the Flow Policy, Countrywide timely notifies
24 MGIC of each of the loans in default.

25 41. Pursuant to the terms and conditions of the Flow Policy, Countrywide timely submits
26 a claim and proof of loss for each of the loans in default.

27 42. The claims and proofs of loss that Countrywide submits for the loans in default
28 include documentation that complies with applicable terms and conditions of the Flow Policy.

1 **MGIC's Improper Interpretations of the Flow Policy**

2 43. Since the collapse of the real estate market, MGIC has desperately attempted to deny
3 coverage as evidenced by its unreasonable claims handling positions, including unreasonable
4 positions regarding the interpretation of key provisions in its standard policy including the Flow
5 Policy.

6 44. For example, the Flow Policy contains an "Incontestability" provision which provides
7 that MGIC cannot rescind coverage for a loan or deny a claim unless certain conditions are
8 established. For instance, pursuant to the Incontestability provision, MGIC can rescind coverage or
9 deny a claim only if it can prove "first party" knowledge or involvement in the misrepresentation,
10 *i.e.*, that the insured or another person involved in originating the loan knowingly made or
11 knowingly participated in the misrepresentation. It is not enough for MGIC to show that a borrower
12 might have misrepresented information in the loan application.

13 45. Notwithstanding the above, MGIC has argued that it can avoid coverage for a
14 borrower's alleged misrepresentation without any proof that a "first party" was involved or had
15 knowledge of the misrepresentation. MGIC states that in order for Countrywide to have the benefit
16 of the Incontestability provision, Countrywide must negate any "first party" knowledge or
17 involvement in the borrower's misrepresentation. As a result, MGIC takes the position that once it
18 presents information which it claims demonstrates misrepresentation by the borrower, the burden
19 then shifts to Countrywide to establish lack of any "first party" knowledge or involvement.

20 46. MGIC's position that Countrywide is required to negate "first party" involvement or
21 knowledge in order for the Incontestability clause to apply is: (1) based on an unreasonable reading
22 of the relevant policy provisions; (2) contrary to the reasonable expectations of the insured based on
23 fundamental legal principles and industry custom and practice (3) and inconsistent with MGIC's own
24 statements regarding how the Incontestability provision operates under its policies. At the very least,
25 there is an ambiguity in the policy which must be resolved in Countrywide's favor as Countrywide is
26 the insured and MGIC drafted the policy language and, therefore, is responsible for the ambiguity.

27
28

1 47. Countrywide's interpretation is consistent with dealings between the parties prior to
2 any dispute regarding the burden of proof, including statements made by MGIC which made clear its
3 own understanding that it bore the burden of proving "first party" knowledge or involvement, in
4 contrast to its current position that Countrywide has the burden of proof to negate "first party"
5 knowledge or involvement. Countrywide relied on this course of dealing and MGIC's
6 representations regarding how the contract applied in its decision to continue obtaining mortgage
7 insurance from MGIC. Accordingly, even if MGIC is correct and the terms of the Incontestability
8 provision do not place the burden of proving "first party" involvement or knowledge of
9 misrepresentations on MGIC, MGIC should be estopped from applying the provision in that manner
10 based on its representations and Countrywide's reliance on those representations to its detriment.

11 48. In addition, MGIC contends the policies allow it to rescind coverage and/or deny
12 claims based on untrustworthy and unsubstantiated evidence of borrower misrepresentation.

13 49. MGIC contends that it can rescind coverage and/or deny claims based on allegations
14 that information provided by or on behalf of the borrower in applying for a loan was misrepresented.
15 Such information concerns, in various cases, the borrower's income, employment, assets, debtors
16 and/or liabilities, and intent to occupy the subject property.

17 50. The information MGIC contends it can rely on to support its adverse coverage
18 decisions with regard to individual loans is untrustworthy, unsubstantiated and does not come close to
19 what MGIC must put forth to establish that there were material misrepresentations entitling it to
20 avoid coverage.

21 51. Much of the evidence on which MGIC bases its rescissions for borrower
22 misrepresentation are second or third-hand accounts of one-sided, self-serving, and/or
23 unsubstantiated hearsay and would not be admissible.

24 52. These unsubstantiated statements contradict sworn statements which are signed
25 subject to civil and criminal penalties for misrepresentation and are entitled to greater weight than
26 unsworn statements of third parties or self-serving statements of borrower made after the default.
27 MGIC does not treat the information upon which it relies with the requisite degree of skepticism.
28 Indeed, MGIC fails to account for possible bias or credibility issues, fully crediting post-default

1 statements by borrowers, obtained by MGIC through its investigators, who have an incentive to shift
2 blame by implicating a first party. MGIC fully credits statements from third parties without verifying
3 their accuracy by obtaining corroborating evidence.

4 53. MGIC also relies on unauthenticated documents of questionable veracity, such as tax
5 and bankruptcy-related documents, even though MGIC knows that these documents have a
6 downward bias, *i.e.* borrowers have an incentive to understate income and ability to pay debts.
7 MGIC provides no rationale for wholly disregarding the truth of information in the loan file in favor
8 of tax and bankruptcy-related documents.

9 54. MGIC also relies on information that is not borrower-specific, such as average salary
10 information on Salary.com, to assert the existence of a misrepresentation of facts specific to a
11 particular borrower. MGIC citation to information posted on Salary.com does not negate the
12 possibility that the borrower earned income in excess of the average salary. Moreover, salary
13 information shown on salary-related websites is based on sources the accuracy and completeness of
14 which cannot be verified.

15 55. MGIC fails to support properly its rescissions based on alleged occupancy
16 misrepresentations. MGIC fails to distinguish between purchase and refinance transactions in
17 determining whether the proper test is intent to occupy or actual occupancy at time of loan
18 origination. On purchase transaction, loan originator need only verify intent to occupy at time of
19 origination. Post-origination "proof" that borrower did not, in fact, occupy the property after
20 purchase does not negate evidence of intent at time of origination, which often includes multiple
21 sworn statements of intent from borrower.

22 56. To the extent that there are borrower misrepresentations with respect to the loans,
23 MGIC's evidence of first-party involvement or knowledge is weak or undercut by materials in the
24 loan file.

25 57. Moreover, a substantial number of the subject loans at issue are "reduced" or
26 "limited" documentation loans whereby the loan originator, pursuant to the loan program being
27 underwritten as approved by MGIC, did not independently verify the borrower's income information.
28 These loans, are sometimes referred to as "stated income" loans. In applying for such loans, the

1 borrower states his or her income on the loan application and the loan originator does not obtain
2 documentation to support the borrower's stated income, though it may undertake to consider the
3 stated job and/or attempt to confirm employment.

4 58. MGIC was fully aware that for a "stated income" loan the borrower's income would
5 not be verified by obtaining documentation to support the borrower's income and, therefore, that
6 these loans involved increased risk. Because the borrower's income was just "stated" and not
7 verified, MGIC did not rely on the accuracy of the borrower's income in deciding to issue insurance.

8 59. Indeed, with regard to all loans submitted for coverage – not just "stated income"
9 loans, MGIC did not even ask to be provided with information regarding the borrower's income or
10 other borrower information. Rather, MGIC relied on other factors to determine whether it wished to
11 insure a particular loan.

12 60. Thus, despite knowing that the borrower's income was not verified in a "stated
13 income" loan and, therefore, that MGIC did not rely on the truth of the borrower's stated income,
14 and despite the fact that MGIC did not request borrower income information as part of the
15 submission of information for individual loans that was provided to MGIC for purposes of its
16 decision whether or not to issue coverage, MGIC has wrongfully denied and/or rescinded coverage
17 with respect to such loans on the ground that the borrower's stated income was misrepresented.

18 61. MGIC has also denied claims or rescinded coverage based upon alleged appraisal
19 misrepresentations with respect to the subject loans. MGIC bases these allegation of
20 misrepresentations on "review appraisals" performed well after the origination. MGIC relies on the
21 value from the review appraisal as being the actual value and the origination opinion as being
22 "inaccurate."

23 62. There is no such thing as "actual" value when dealing with a real property appraisal.
24 A statement of appraised value is an opinion, not a fact, and thus will support a rescission claim only
25 if the appraisal does not actually represent the appraiser's true opinion or the appraiser had no good
26 faith basis for rendering the opinion. It is not sufficient simply to show that a second appraiser has a
27 different opinion, particularly where the second appraiser's opinion was developed with the benefit
28 of hindsight.

1 69. In particular, Countrywide seeks declaratory relief regarding the interpretation of
2 Section 2.4 of the Flow Policy entitled "Incontestability for Certain Misrepresentations."
3 Countrywide seeks declaratory relief as to, among other things, how Section 2.4 should be interpreted
4 concerning the burden of proof regarding "first party" involvement or knowledge in a
5 misrepresentation. Countrywide contends that MGIC bears the burden of proving "first party"
6 knowledge or involvement. Countrywide also seeks declaratory relief regarding the interpretation of
7 Sections 2.2, 2.3 and 4.4 of the Flow Policy. For example, Countrywide seeks declaratory relief as to
8 how Sections 2.2, 2.3 and 4.4 should be interpreted and applied regarding allegations by MGIC that
9 coverage can be denied or rescinded for a loan based on alleged misrepresentation of borrower
10 information and opinions regarding property values. Further Countrywide seeks declaratory relief as
11 to how the Flow Policy should be interpreted and applied with regard to other issues raised by MGIC,
12 including, denials and/or rescissions for matters unrelated to the credit quality of the underlying loan
13 or the validity of a claim, such as alleged violations of underwriting guidelines.

14 70. Thousands of loans are covered under the Flow Policy. In addition to the claims that
15 have been reported, claims currently are being submitted on a regular basis to MGIC. It is expected
16 that MGIC will seek in the future to deny and/or rescind coverage with respect to these loans on the
17 same improper grounds for denial and/or rescission that MGIC has already asserted.

18 71. In order to avoid further controversy and to avoid or limit the need for future
19 litigation between the parties, it is necessary and appropriate for the Court to determine issues of
20 policy interpretation under the Flow Policy with respect to, among other things, the issues described
21 above.

22 72. Based on its conduct to date, it is clear that MGIC disputes the proper construction of
23 the Flow Policy, including Sections 2.4, 2.2, 2.3 and 4.4. Accordingly, it is necessary and proper for
24 the Court to declare the rights and obligations of the parties under the policy, as more specifically set
25 forth in the Prayer for Relief, in order to guide the parties both with regard to claims that currently are
26 pending but also as to claims that continue to be made on a daily basis and certainly will be made in
27 the future.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

73. For these reasons, it is appropriate for this Court to declare, pursuant to California Code of Civil Procedure Section 1060, the rights and obligations of the parties under the Flow Policy with respect to, among other things, the issues described above.

PRAYER FOR RELIEF

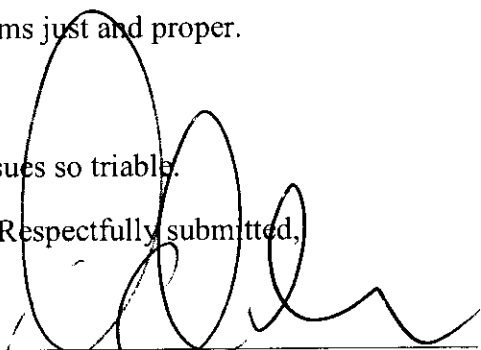
WHEREFORE, Countrywide respectfully requests this Court to grant judgment in their favor and against MGIC as follows:

1. With respect to the First Cause of Action, Countrywide requests that the Court declare the rights and obligations of the parties, including but not limited to, a declaration regarding the proper interpretation of Sections 2.4, 2.2, 2.3 and 4.4 of the Flow Policy.
2. Such other and further relief as the Court deems just and proper.

JURY DEMAND

3. Countrywide requests a trial by jury on all issues so triable.

Date: December 17, 2009

Respectfully submitted,


David M. Halbreich, Esq.
David E. Weiss, Esq.
Attorneys for Plaintiff
COUNTRYWIDE HOME LOANS,
INC.

